

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of S.H.,)	
Petitioner)	
And)	CAUSE NO. 050916-41
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 15-year-old sophomore (d/o/b March 2, 1990) who presently attends Monrovia High School (Monrovia), a public high school located in the Monroe-Gregg School District (Monroe-Gregg). At all times relevant, Petitioner's parents have resided within the attendance area of Monroe-Gregg. Petitioner attended school within Monroe-Gregg through seventh grade and then attended Cardinal Ritter High School (Cardinal Ritter) for his eighth and ninth grade years. As a freshman, Petitioner participated on the varsity wrestling team for Cardinal Ritter. During his ninth grade year, Petitioner told his parents he wanted to return to Monrovia schools.

On June 16, 2005, Petitioner, through the Athletic Director at Monrovia, requested a determination of his eligibility to participate in athletics during the 2005-2006 school year. The Respondent, by its Assistant Commissioner, on August 1, 2005, found Petitioner eligible to participate with limited eligibility pursuant to the Respondent's Rule **C-19-6.2**.¹ Rule **C-19-6.2** provides for limited eligibility for a student who transfers without a corresponding change of residence to a new district by the student's parents.

Petitioner, by his parents, requested a review of the ISHAA's decision by Respondent's Review Committee. This request was made on August 23, 2005. The Respondent's Review Committee conducted its review on September 1, 2005. The Review Committee determined that Petitioner did

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule C-19-6.2** is "common" to both genders. (All references are to the 2005-2006 by-laws of Respondent.)

not show that there exists an undue hardship² that would result from enforcement of the transfer rule. The Review Committee issued its decision on September 12, 2005, upholding the IHSAA's decision declaring Petitioner to have limited eligibility at Monrovia for 365 days from the date of his last athletic contest at Cardinal Ritter, provided he meets all other applicable IHSAA eligibility rules.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel³ on September 16, 2005. The parties were notified that date of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. The parent notified the CRP on September 20, 2005, that he wished for the proceedings in this matter to be closed to the public. Hearing was set for October 13,

²The Hardship Rule provides, in pertinent part:

C-17-8.1 General

Except with respect to Rules 4 [Age], 12 [Enrollment and Attendance] and 18 [Scholarship], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of any Rule when the affected party establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

* * *

C-17-8.4 General Consideration

- a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.
- b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.
- c. Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.

C-17-8.5

In addition to the foregoing, in transfer cases under Rule 19-6 [Transfer Eligibility Without Change of Residence], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) the student continues to reside with his/her parent(s) or guardian(s); (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic-related motives surrounding the transfer; and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is no athletic-related motives surrounding the transfer.

³The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

2005, at the State House, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On October 13, 2005, the CRP convened.⁴ The Petitioner was not present in person but was represented by his parents. The Respondent appeared by counsel. Prior to the hearing, the Petitioner submitted three exhibits which were letters supporting his position. The authors of the letters were not present to testify. Respondent objected on the basis of hearsay. Although the exhibits were admitted, it was noted that due to the hearsay nature of the exhibits and the timely objection, the decision of the CRP could not be based solely upon these exhibits.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is a 15-year-old sophomore (d/o/b March 2, 1990) enrolled in Monrovia High School within the Monroe-Gregg School District.
2. At all times relevant, Petitioners parents have resided within the attendance area of Monroe-Gregg.
3. Petitioner attended school within Monroe-Gregg through seventh grade. Petitioner's parents transferred Petitioner and two of Petitioner's sisters to Cardinal Ritter to provide the children with a Catholic education and more structure and discipline. Petitioner attended Cardinal Ritter High School (Cardinal Ritter) for his eighth and ninth grade years. As a freshman, Petitioner participated on the varsity wrestling team for Cardinal Ritter.
4. During his freshman year, Petitioner told his mother he wanted to return to Monrovia to be with his friends. Petitioner told his mother that part of the reason for returning to Monrovia was that he liked its band and wrestling programs better than those at Cardinal Ritter. During that school year, Petitioner's mother noted how unhappy Petitioner was. Once Petitioner's parents decided to enroll Petitioner in Monrovia for the 2005-2006 school year, Petitioner appeared much happier.
5. On the IHSAA Athletic Transfer Report, Monrovia indicated Petitioner would be eligible for full eligibility while Cardinal Ritter checked the box for limited eligibility. Petitioner did not seek a hardship determination when signing the Transfer Report and neither school signed the hardship verification.

⁴Eight members were present: Thomas J. Huberty, Ph.D., Chair; Scott F. Eales; James Perkins, Jr.; Brenda K. Sebastian; Earl H. Smith, Jr.; Melissa Starry; Terry Thompson, and Brad Tucker.

6. Petitioner is not an outstanding athlete, but is part of the team. Petitioner's parents believe athletics are an important part of a well-rounded upbringing. The parents "use sports to learn commitment, teamwork, a physical and emotional release, and most important to have fun."
7. Although Petitioner did not play football as a freshman at Cardinal Ritter, he is participating on the JV team with Monrovia.
8. Petitioner told the principal of Cardinal Ritter that he wanted to return to Monrovia for wrestling and band.
9. Limited eligibility would permit Petitioner to participate in JV football and JV wrestling. He would be eligible to participate in varsity sports, including varsity wrestling, beginning with the wrestling sectionals.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. **Rule C-19-6.1** provides immediate eligibility for a student who transfers schools without a change of residence by the student's parent or guardian. Petitioner does not meet any of the criteria under this Rule, nor does Petitioner argue that he does. Accordingly, Rule C-19-6.1 does not apply.
4. A student who transfers without a corresponding change of residence to a new district by the student's parents may be declared to have limited eligibility⁵ pursuant to **Rule C-19-6.2**

⁵Respondent's by-laws provide the following definition: **Limited Eligibility** - A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in

unless the transfer was primarily for athletic reasons⁶ (in which case the student would be ineligible for 365 days), or unless there exist circumstances showing an undue hardship would result from enforcement of the Rule. Although Petitioner made comments indicating wrestling was one reason for his desire to return to Monrovia, there was no evidence Petitioner's motives fell within Respondent's definition of a "transfer primarily for athletic reasons." Rather, Petitioner was unhappy and wished to return to Monrovia to attend school with his friends. Petitioner's move was not athletically motivated.

5. In submitting the IHSAA Athletic Transfer Report, Petitioner did not seek a hardship transfer pursuant to **Rule 17-8.1**, nor did either school sign the hardship verification pursuant to **Rule 17-8.5**. The evidence does not support a conclusion that application of the transfer rules would be an undue hardship for Petitioner.

ORDER

1. Respondent's determination that Petitioner shall have limited eligibility for 365 days from his last participation at Cardinal Ritter High School is upheld. This was determined by a vote of 8 - 0.

DATE: October 26, 2005

/s/Thomas J. Huberty,
Thomas J. Huberty, Ph.D., Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

interschool athletics as a member of a varsity athletic team.

⁶Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.